

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

D K TRIVEDI

Versus

PRESIDENT

Appearance:

MR NAGIN N GANDHI for Petitioner
MR NAVIN PAHWA FOR PM THAKKAR for Respondent No. 1-2
MR RV DESAI FOR Respondent No.3
MR DEEPAK R. DAVE for AD OZA for Respondent No. 4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 22/09/2000

CAV JUDGEMENT

#. Heard Mr.N.N.Gandhi, learned advocate appearing on behalf of the petitioner, Mr.Navin Pahwa, learned advocate appearing on behalf of the respondent Nos. 1 &

2 and Mr.R.V. Desai, learned AGP on behalf of the respondent No.3 so also Mr.Deepak R. Dave for Mr.A.D.Oza on behalf of the respondent No.4.

#. In the present petition, the petitioner has challenged the order passed by the Gujarat Secretary Education Tribunal in Application No. 269 of 1987 dated 4th October, 1989. The brief facts giving rise to this petition are as under :-

The petitioner was working as the teacher since 6th September, 1952 in M.M.High School, Gadhada managed by the respondent Nos. 1 & 2 at the time of his appointment the school was a Government Secondary School and the petitioner continued as a Government teacher till 1971. In the year 1971, the school was transferred to private body namely Gadhada Education Trust and the petitioner was continued as protected teacher. The petitioner was having qualification of B.A.B.Ed and S.T.C.. The petitioner was senior most teacher in the school right from 1981 and he was working as a Supervisor in the school and he was senior most amongst the teachers who were on the relevant time were working in different non Government schools. The Headmaster of the school retired on 31st May, 1987. Thereafter the petitioner was being senior most working as in-charge head master of the school. At the same time, the respondent No.4 was working as teacher in the school upto 22nd June, 1987. The respondent No.4 appointed as teacher from 1973-74 and he was B.Com.. and thereafter the respondent No.4 in the year 1973-74 for further proceeding his further study of B.A. In the year 1975-76 and 1976-77 the respondent No.4 worked at the Secondary School at Ugamedi as in-charge head master and thereafter, the respondent No. 4 appointed as the respondent No.1 school M.M. High School, Gadhada in Higher Secondary School. According to the petitioner, the respondent No.4 was junior to the petitioner.

#. In the present petition, the question involved that by respondent school the respondent No.4 was selected in the post of Head Master and the petitioner was not selected by the respondent school. The respondent school has advertised the post of Head Master in Saurashtra Samachar on 17th April, 1989, wherein applications were invited from the arts graduate eligible for the post. In pursuance of the said advertisement, the petitioner had applied for the post of head master who was qualified according to the said advertisement to the post of Head Master on 14th May, 1987. The selection committee of the

school took interview of five candidates present including the present petitioner. In the said selection, Rojkam was recorded regarding interview taken on 14th May, 1987 and it was stated that as there were only four candidates from the school and one outside, fresh advertisement in a widely circulated paper should be inserted inviting applications for the post in question. Therefore, second advertisement was issued by the respondent school for the post of Head Master, wherein qualification has been fixed as graduate having 5 years experience for the post of Head Master. The second advertisement produced on record on 12 at Annexure-B and a copy of the first advertisement has been produced on record on page 11- Annexure-A. In response to the second advertisement, the respondent No. 4 had also applied to the post of Head Master along with petitioner. The selection committee met on 19th June, 1987. The selection committee has selected the respondent No.4 in the post of Head Master and the petitioner was not selected, therefore, the petitioner has challenged the said non selection of the petitioner and selection of the respondent No. 4 before the Gujarat Secondary Education Tribunal at Ahmedabad by Application No. 269 of 1987 under the provisions of the Gujarat Secondary Education Act. The tribunal has considered the contentions of the petitioner and after examining the record, ultimately come to the conclusion by order dated 4th October, 1989 rejected the said application filed by the petitioner. It is this order against which the present petition has been filed by the petitioner.

#. In the present petition, RULE has been issued on 2nd January, 1990 and interim relief refused on 16th April, 1999 by this Court. The learned advocate Mr.Gandhi appearing on behalf of the petitioner has submitted before this Court that now because of the passage of time, the petitioner has already been retired from service. However, he submitted that if ultimately the petitioner succeeds in the petition, then he will be entitled to the post of Head Master by deemed date and he may be entitled to monetary benefit of pension and others as per the service condition of the Head Master. The learned advocate Mr.Gandhi has submitted that respondent No. 4 was not qualified and not having five years total experience as provided under Regulation 20(1) of the Gujarat Secondary Education Regulation, 1974. He also submitted that the appointment or selection of respondent No. 4 is also contrary to Section 35(4) and (5). He also submitted that the tribunal has committed gross error in not considering the relevant provisions of Gujarat Secondary Education Act and Regulation 20(1).

The learned advocate Mr.Gandhi has read the entire petition before this Court and also entire order passed by the tribunal and pointed out that the tribunal has not properly considered the decision of this Court reported in 23(1) GLR 664 in case of MAGANBHAI BHIKHABHAI MISTRI, OLPAD TALUKA AND OTHERS. Mr. Gandhi has also submitted that the said decision of this Court has been misunderstood and not properly appreciated by the tribunal and therefore, the tribunal has committed gross error in rejecting the application filed by the petitioner.

#. Mr.Navin Pahwa, learned advocate appearing on behalf of the respondent Nos. 1 & 2 has submitted that the tribunal has rightly considered the relevant provisions of the Act as well as Regulation 20(1) and also considered the experience of the respondent No.4 which comes to more than 12 years and he also submitted that there was no much difference of teaching experience in respect of the Secondary School and Higher Secondary School but he submitted that teaching experience at the secondary school and higher secondary school is taken together then the respondent No. 4 was qualified when he was selected by the selection committee for the appointment to the post of Head Master. Mr.Pahwa has also submitted that there was no malafide or irregularities committed by the selection committee against the petitioner and respondent No. 4 was rightly selected because the respondent No. 4 found eligible and qualified by selection committee because the respondent No. 4 given 114 marks in comparison, the petitioner had received 103 marks in the selection process. Therefore, considering the relevant provisions of Section 35 of the Gujarat Secondary Education Act, Section 35(4) and (5) wherein, the provision has been specifically made by the statutory enactment that for the purpose of such selection, preference shall be given to protected teacher if he is otherwise eligible. According to Mr.Pahawa, the petitioner was not otherwise eligible though he was protected teacher. Mr.Pahwa has also submitted that in respect to Section 35(5), proviso provided that for the purpose of such selection, preference shall be given to senior teacher serving in the school or schools under the same management if he is otherwise eligible and suitable. Therefore, relying upon the proviso of both sub Sections (4) and (5) of Section 35 of the Act, Mr.Pahwa submitted that in comparison with the petitioner, the respondent No.4 was found eligible and suitable by the Selection Committee in respect of the post of Head Master and there he was rightly selected by the Selection Committee and therefore, there was no malafide against the petitioner

by the selection committee or by school authority. Therefore, he submitted that this petition is required to be dismissed in light of the fact that at the time when the petition was admitted by this Court and the interim relief has been rightly refused and by passage of time almost 13 years have passed from the date of appointment of the respondent No.4, therefore, the present petition may be dismissed with costs.

#. Mr. Deepak Dave, learned advocate appearing on behalf of the respondent No.4 has submitted that respondent No.4 has been rightly selected. It is submitted that the respondent No.4 was having requisite qualification and he was found eligible as well as suitable by the selection committee and the contention raised by the petitioner before the tribunal and the tribunal has rightly considered all the contentions and gave detailed reasons in support of its conclusion. According to the submission, the tribunal has not committed any error which found apparently on the face of record which requires any interference by this Court while exercising powers under Article 227 of the Constitution of India. Mr. Dave, learned advocate for the respondent No.4 has also pointed out that this Court cannot act as an appellate authority and also cannot reappreciate the very same evidence which was appreciated by the tribunal and therefore, according to his submission, the present petition is required to be dismissed because respondent No. 4 was working as the Head Master from 1987 and therefore by passage of 13 years, his appointment cannot be disturbed especially when the interim relief was refused by this Court in the year 1990.

#. Mr. R.V. Desai, learned AGP appearing on behalf of the respondent No. 3 also supported the decision of the tribunal.

#. I have heard the learned advocates for the parties and perused the entire order passed by the tribunal. The tribunal has considered all the contentions which has been raised by the petitioner before the tribunal. So far as the contention of the petitioner that the respondent No.4 was not having requisite experience about 5 years, the tribunal has examined the very issue in detail in light of the provisions of Regulation 20(1) of the Gujarat Secondary Education Regulation 1974. It is noted that on page 16 - internal page 4 of the petition, the tribunal has in detailed considered the fact that the respondent No.4 was qualified to be appointed as a Headmaster. Regulation 20(1) prescribes the qualifications for being appointed as a headmaster. The

qualification prescribed is a trained graduate with 5 years post training experience of which atleast 3 years teaching experience must be in a secondary school. Admittedly, the respondent No.4 started his career as teacher with effect from academic year 1973-74. He was then merely B.Com. He spent academic year 1974-75 for prosecuting the studies of B.Ed. For the academic years 1975-76 and 1976-77 he worked at a secondary school at Ugamedhi as I/c. Headmaster with effect from 5-7-1977. The respondent No.4 had joined the respondent school in the higher secondary section. The respondent No.4 was having qualification of B.Com, M.Ed. and is having the total teaching experience of about 12 years and on the date of appointment, if the teaching experience at Secondary School and Higher Secondary School is taken together. However, the contention of the petitioner was examined thereafter that regulation 20(1) did not mention the experience of higher secondary school because when the regulations were not formed in the year 1974, there was no higher secondary school. The scheme of higher secondary school was commenced in the year 1976 by including Standard 11 and prescribing secondary education by carrying standard 12. At that time the Government by its policy resolution has laid down that headmaster for both the sections i.e the secondary section and higher secondary section will be the same. Not only that by further policy resolution the Government has provided that for the purpose of appointment of second head and supervisors, the secondary and higher secondary units should be taken as one whole. Relying on this Government policy resolutions, earlier the Tribunal Justice V.V.Bedarkar has held in Application No. 267/85 that for the purpose of appointment of a supervisor, a higher secondary teacher is also to be considered as a secondary teacher and if he is having more credit marks, he can be and should be appointed as a supervisor. For that purpose of appointment of secondary teacher and higher secondary and supervisors, the designations of secondary and higher secondary teachers are to be interchanged, then experience of higher secondary teacher should be considered as a qualifying experience for the appointment of a headmaster. This seems to be correct interpretation because even the Regulation 20(1) which has been amended by Resolution dated 8th July, 1987 whereby, experience of teaching in higher secondary school has also been now included as the qualifying experience for the appointment of headmaster.

#. The tribunal has rightly considered the judgment reported in 23 GLR 664 and come to the conclusion that meritorious person is required to be appointed and if the

post of Headmaster is required to be filled up, criteria of merits cum seniority but if two candidates are having equal merits then the senior between the two should be preferred and should be appointed. But according to the tribunal, in the present case on the criteria of the merits, the respondent no.4 is more eligible and suitable and therefore on the principle of merits cum seniority, the respondent No.4 was required to be appointed. The tribunal has also appreciated the fact that in comparison to the petitioner, the respondent No.4 having more marks i.e. 114 marks against the petitioner who was given 103 marks only by the selection committee.

##. I have also perused the entire order passed by the tribunal and this court is of the considered opinion that the tribunal has dealt with each and every contention which has been raised by the petitioner and the tribunal has given detailed reasons in support of its conclusion and considering the experience of respondent No.4 as teacher in secondary and higher secondary school, the respondent no.4 was qualified, eligible and found suitable by the selection committee. Even considering the provisions of Regulation 20(1) in the said regulation, words "teaching experience" of not less than two years in secondary school and with post training experience of not less than three years. Even by subsequent Government resolution dated 8th July, 1987, it is made clear that experience of teaching in higher secondary school has also now been included for qualifying experience for the appointment to the post of Headmaster, therefore, no illegality seems to have committed by the selection committee and considering the relevant provisions of Section 34(4) and (5), the respondent No.4 was found to be eligible and suitable for the post of Headmaster by selection committee of the respondent school authority and therefore, according to my opinion, the tribunal has rightly rejected the application filed by the petitioner and while rejecting the said application, the tribunal has not committed any error which is apparently found on the face of the record. There is no infirmity in the order passed by the tribunal. Findings given by the tribunal is not contrary to any evidence on record on the contrary according to my opinion, the tribunal has rightly appreciated the relevant provisions of Government resolution in respect of the Gujarat Secondary Education Act and Regulations. The tribunal has also rightly appreciated marks given to the respondent No. 4 in comparison to the petitioner and after all it was the selection on the basis of merits of the persons who was found suitable by selection committee and any court cannot act as an appellate committee over

the decision of the selection committee and therefore, considering the limited jurisdiction vested with this Court, according to my opinion, the tribunal has not committed any error or there is no infirmity in the order impugned in the petition and while exercising the jurisdiction under Article 227 of the Constitution, this Court cannot act as an appellate authority as well as this Court cannot reappreciate the evidence which was appreciated by the tribunal in view of the decision of the Apex Court reported in 1998 (1) GLR 17 and 1998 AIR Supreme Court Weekly 1840.

##. This petition has been filed by the petitioner under Article 227 of the Constitution of India and therefore, I have exercised powers at the time of considering legality and validity of the order passed by the Tribunal in application No. 269 of 1987 dated 4th October, 1989. Therefore, considering this limited revisional powers under Article 227 of the Constitution, according to my opinion, the tribunal has not committed any error of law. Therefore, according to my opinion, there is no miscarriage of justice or there is no illegality committed by the tribunal which requires inference of this Court while exercising powers under Article 227 of the Constitution. As a result, the present petition is required to be dismissed and the same is dismissed accordingly. Rule discharged. No order as to costs.

Date : / /2000 [H.K.Rathod, J.]

#kailash#